

Kentucky Transportation Cabinet
Goal Setting Methodology
Federal Fiscal Year (FY) 2011

(A). Overall Goal for DBE Participation

As outlined in 49 CFR Part 26, Section 26.45(b) of the Disadvantaged Business Enterprise (DBE) regulations, the Kentucky Transportation Cabinet (Cabinet) has based its goal on demonstrable evidence of the availability of ready, willing and able DBE's relative to all businesses ready, willing and able to participate on DOT-assisted contracts. The Cabinet expects to meet the 7.76 percent overall goal in obtaining 2.00 percent from race neutral means and 5.76 percent participation through race conscious means.

(B). Step One:

**Base Figure for the Relative Availability of
Disadvantaged Business Enterprises (DBE)**

49 CFR Part 26, Section (c) states that Step 1 must begin by determining a base figure for relative availability, and that any percentage figure derived is considered a basis to begin examining all evidence available within the jurisdiction. The Cabinet has defined its contracting market as being *statewide* encompassing its (120) counties. Currently there are (1440) establishments across the state conducting business in the NAICS codes in which the cabinet seeks participation. All such firms must be determined to be financially qualified and have professional experience to do business with the state before submitting bids on any project issued by the Cabinet in accordance with KRS Section 176.140 and its regulations.

Of those establishments a total of (918) have demonstrated that they are ready willing and able to perform by meeting the states requirements outlined in KRS Section 176.140 for prequalification. Included in that number, (84) DBE's have demonstrated that they too are ready, willing and able to participate by meeting the states requirements outlined in KRS Section 176.140 for prequalification.

Considering the list of ready willing and able companies, the formula becomes:

$$\frac{\text{DBE Contractors}}{\text{Non-DBE Contractors}} = \text{Base figure}$$

The resulting calculation is as follows:

$$\frac{84}{918} = 9.2 \% \quad \text{Base Figure}$$

Step Two: Adjustment to Base Figure

As outlined in 49 CFR Part 26, Section 26.45,(d) once the baseline figure is calculated, it is necessary to examine the available evidence in the local market to determine what adjustment, if any, is needed. One type of evidence that must be is the current capacity of DBE's to perform work in the contracting program, as measured by the volume of work DBE's have performed in recent years. This is done to ensure that the goal accurately reflects the level of participation the Cabinet would expect from certified DBEs if discrimination were not a factor.

In recent years, as charted below, the volume of work for the Cabinet has fluctuated, which does affect the volume of work that DBE's have performed. Therefore for a more accurate reflection of past participation, we used the median which would adjust all abnormally high or abnormally low past participation figures.

| Fiscal Year | 2007 | 2008 | 2009 |
|----------------------|-------------|-------------|-------------|
| Total Awards | 821,451,867 | 221,643,111 | 473,837,934 |
| DBE Awards | 37,727,551 | 12,894,859 | 43,840,498 |
| DBE % of TotalAwards | 4.59 | 5.79 | 8.61 |

$$\text{Median \%} = (4.59\% + 5.79\% + 8.61\%) / 3 = 6.33\%$$

$$\text{Adjusted Base Figure\%} = (6.33\% + 9.2\%) / 2 = 7.76\%$$

In addition, this is an appropriate calculation in that effective March 5, 2010 the US Department of Transportation DBE program rules were amended to change how often recipients are required to make submissions documenting the methodology and process used to establish the annual overall goal to be implemented each federal fiscal year. Under the new rules, DBE goal submissions will be made at three (3) year intervals. Therefore we have used the previous three years participation as reported in submitted 1405 reports.

Other types of evidence that must be considered are evidence of disparity study and if the base figure of another recipient was used. The Cabinet has no evidence from disparity studies conducted anywhere within this jurisdiction nor has the used another recipient's base figure.

The Cabinet has considered evidence from related fields that affect the opportunities for DBE's to form, grow, and compete. Such evidence included statistical disparities in the ability of DBE's to get financing, bonding, and insurance required to participate in the Cabinets program and data on employment, self-employment, education, training, and union apprenticeship programs. After consideration, the Cabinet found that this evidence did not cause for further adjustment to the overall goal.

We looked at the ready, willing and able DBE's ability to perform based on past performance. This represents all awards to DBE's in the past three fiscal years. Combining the DBE and Contractor data from above with the chart average, we reached the adjustment for step two.

Overview

The Kentucky Transportation Cabinet (Cabinet) has established an overall disadvantaged business enterprise (DBE) goal for fiscal year 2011 (October 1, 2010 – September 30, 2011) as 7.76 percent. The Cabinet expects to meet the 7.76 percent overall goal in obtaining 2.00 percent from race/gender-neutral means and 5.76 percent participation through race/gender-conscious means on contract goals that will be established on U.S.D.O.T.-assisted contracts. The goal was calculated using the steps outlined above. This goal and the methodology are consistent with the requirements of 49 CFR 26.45.

Public Forums

These are some of the comments from the 2011 public forums; comments will continue to be taken for (45 days) until July 10, 2010.

- Do you know how much of stimulus money project was awarded to DBE? How many?

OCRSBD: when Highway projects are selected and schedule for full year, you must check our web-site for upcoming letting, what kind of project, and who was award. Get in-touch with them. All Federal-aid projects have goal. Some state project doesn't have goal and prim would not seek sub.

- I was told by TC purchasing or construction division that there is no goal on the project

OCRSBD: I will check with Construction Procurement Division and get back with you.

- Why they don't break large projects up into several smaller ones?

OCRSBD: if it is possible it will be done.

- Does Cabinet advertise ARRA projects?

OCRSBD: Yes

- Who monitor these projects?

OCRSBD: Office of Civil Rights & Small Business Development staff monitor these projects to make sure that the DBEs are at the site, no payment delay, no discriminations. Also, every organization s doing their own random monitoring and checking EEO, Wages, also KYTC inspectors are on the site for monitoring

- What is the time frame for prim to pay sub?

OCRSBD: According to Regulation when Prim gets pay they have seven days to pay.

- What is the best practice for monitoring?

OCRSBD: Our office uses same check list as Federal Highway does.

- Does other organization such as FAA, Tarc, have separate goal?

OCRSBD: yes

- Does enhancement projects has goal?

OCRSBD: yes. City of Louisville, LEX,J-town, all have goals on Federal funded projects

- Is it possible to have a Joint venture workshop?

OCRSBD: Yes we will work on that.

- Is it possible to joint with other DBE contractor to increase the qualification requirements for bidding as prim?

OCRSBD: Yes, as long as the two contractors are willing to complete the project.

- Why professional services don't have any goals?

OCRSBD: KYTC just concentrate on Construction site to reach DBE goals not professional services. However, many professional services expressed their concern about the setting goals on projects

We will take this to Construction procurement for consideration.

- Is it possible to have goals on all projects State or Federal?

OCRSBD: All Federal Funded projects required DBE goals on the other hand State project does not have this requirement.

- How we can apply for pre-qualification, Certification as DBE, and how to check up-coming letting?

OCRSBD: to apply for prequalification you go to our website to apply for DBE, and prequalification

Letting posted on the website by 3rd or 4th week of the month, you also can check the past lettings, and find out who, how. and whom got awarded the project, notice letter to contractor. You also can view ARRA projects. Our website is the best resources for you for reviewing letting; it is also a good source of networking.

- What can we do about primes not paying promptly? We know you have said to call you but we do a lot of business with this prime.

OCRSBD: Prompt payment monitoring is our responsibility. We can address the prompt payment issue from that perspective without making it a complaint from you the subcontractor.

- We have noticed higher goals on projects. Will the goal be cut if more Minority and Women owned businesses don't participate?

OCRSBD: The goal is directly related to participation, per 49 CFR 26 it can impact the formula used to set the goal.